(1)

Supreme Court, U.S.
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No. 03-23

In The

Supreme Court Of The United States

Webster Watnik

Petitioner

vs.

Debra Kniesley

Respondent

Petition For Writ Of Certiorari To
The Court Of Appeal Of The State Of California,
Fourth Appellate District, Division Two

PETITION FOR WRIT OF CERTIORARI

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47 pp

QUESTIONS PRESENTED

This petition asks:

1. Did the California family law court violate petitioner's right of due process by completely terminating his parental rights?

2. Did the California family law court fail to apply the binding authority of *Santosky v. Kramer* 455 U.S. 745 (1982)?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Webster Watnik, the Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and

[ ] is reported at; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Superior court appears at Appendix B to the petition and

[ ] is reported at; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

Review was denied by the California Supreme Court on April 9, 2003. A copy of that decision appears at Appendix C.

The time to file this petition is 90 days from April 9, 2003.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATEMENT OF THE CASE

Webster Watnik and Debra Kniesley were married in 1988. They had one child, Wyeth, born on July 27, 1989. They divorced in 1992.

Beginning in 1996, Debra used her superior financial resources to overwhelm and oppress Webster and destroy his relationship with his son.

Debra's "anger-fueled" campaign led to the April 2, 2001, Statement of Decision and Order.

In the April 2, 2001, order, family court dramatically slashed Webster's visitation with his son from 20% to only one hour-a-month, ordered that all future visitation be monitored by a court-appointed psychologist, and named a specific psychologist, Dr. Charles Shipley, as monitor.

Webster called Dr. Shipley's secretary and was told to send the payment for the first visit. He did so. However, Dr. Shipley then rejected family court and refunded Webster's money. No visit occurred.

Webster returned to family court to modify the "permanent" custody orders. The family court judge, the Honorable Ben Kayashima, called a psychologist, Dr. Anita Lampel, and in a private, ex parte conversation, personally asked her to take the case.

She agreed, and Judge Kayashima then modified his three-month old "permanent" custody order. Judge Kayashima also threatened Webster that he would terminate all visitation if Webster did not "cooperate."

Webster and his teenage son had their first visit on August 1, 2001. After the visit, Dr. Lampel arranged for the next two visits, on September 12, 2002, and October 15, 2001. Webster and his son had their second visit on September 12, 2001. Dr. Lampel videotaped both visits.

At the conclusion of the second visit, Webster and Dr. Lampel agreed to meet privately to discuss the issues Webster and his son could talk about. After the

brief private meeting, Dr. Lampel quit and refunded Webster's money.

Webster then returned to family court once again to modify the "permanent" custody orders. Webster asked that the monitor be dropped and visitation moved to weekends and increased.

Judge Kayashima denied Webster's motion to shorten time, set the OSC for November 26, 2001, and personally ordered Dr. Lampel to appear.

In the interim, Webster subpoenaed the videotapes of both visitation sessions, transcribed them, and sent copies to all parties.

Debra did not file any opposition to Webster's OSC, but Michael Darlington, the lawyer representing the teenage boy (in Superior Court) filed a one and-a-half page responsive declaration alleging that Webster had "abused his visitation" and asked the court to terminate all contact between Webster and his teenage son.

At the November 26, 2001, hearing, Judge Kayashima personally laid the foundation for the videotapes brought in by Dr. Lampel. Webster then submitted his transcripts of the videotapes, but Judge Kayashima refused to accept the transcripts, telling Webster he would only use them as "guides". Judge Kayashima intentionally did not order transcripts of his own videotape evidence.

After Judge Kayashima finished admitting his own evidence, Webster questioned Dr. Lampel.

Under Webster's direct questioning, Dr. Lampel stated that she understood the legal definition of emotional abuse and that Webster did not emotionally abuse his son. Dr. Lampel also testified that Webster did not refuse to cooperate with her nor did she end either visit early. Dr. Lampel also stated that Wyeth wanted much more time with his father and that she had been "happy" to meet with Webster and his son more frequently.

Webster asked her about her letter accusing

him of refusing to be "guided" as her reason for quitting, but Lampel admitted that Webster had never specifically told her he would not cooperate, and in an earlier private conversation, Webster said just the opposite.

Neither Debra's attorney nor Darlington called any witnesses or introduced any evidence.

At the end of the hearing, Judge Kayashima continued the matter, ordering Webster to call his clerk for the next date. Webster then moved for temporary visitation with his son, but Judge Kayashima denied the motion, preventing Webster and his teenage son from having any contact at all during the holidays.

On December 11, 2001, Webster contacted the court clerk, but was told Judge Kayashima would not get to the case until he "had time" and Webster would have to wait until the judge "wasn't busy."

Webster then filed a Writ of Mandate, Case No. E030777, asking this court to order family court to provide Webster and his teenage son visitation over the Christmas holidays. The writ was summarily denied.

On December 17, 2002, Webster filed a Motion for Evidentiary Hearing, but the clerk did not assign it to a hearing date.

On January 16, 2002, Webster filed another motion in family court seeking visitation. Webster again asked for visitation with his teenage son, or in the alternative, set the hearing date for his previous OSC. Judge Kayashima dismissed Webster's motion but set the next hearing for January 28, 2002. Judge Kayashima also denied Webster's Motion for an Evidentiary hearing without anyone opposing the motion and without any argument.

At the start of the January 28, 2002, hearing, Webster pointed out that he had asked the court to set the hearing date, and since Judge Kayashima had done so, Webster's January 14th motion was, in fact, granted. Webster asked Judge Kayashima to correct

the record. Judge Kayashima ignored Webster. Webster then set up a television/videotape machine, and demanded that the videotapes of the visitation sessions be played in open court where the court stenographer could transcribe them. Judge Kayashima reluctantly agreed.

On April 2, 2002, Judge Kayashima released his First Amended Statement of Decision and Order. This latest order permanently denied Webster all contact with his teenage son.

Webster filed a timely appeal, and the Court of Appeal affirmed the decision on January 23, 2003. Webster petitioned the California Supreme Court and it was denied on April 9, 2003.

REASONS FOR GRANTING THE PETITION

In 2002, a California family law court permanently terminated all contact between a father and his son.[1]

In doing so, the state court relied on an extreme interpretation of a California state law. However, this extreme interpretation of state law clearly conflicts with prior decisions by this Court.

Further, the family law judge violated Webster's constitutionally protected interest in the care, custody, and companionship of his child without due process.

This Court must grant this petition in order to guide family law courts throughout the nation on a question that affects more than one million children a year who are caught in the divorce of their parents.

In completely terminating all contact between Webster and his teenage son, the family law judge relied on a portion of California Family Code Section 3020, subd. (b). The entire section states:

> "The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing

contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011."

In his decision, the family law judge ignored the rest of the code section and picked out the phrase that says "...except where the contact would not be in the best interest of the child..."

The rationale used by the family law judge was clear. Even though a firm distinction separates family law courts and juvenile courts in California—preserving the removal of children from their parents exclusively to juvenile courts (see *In re Chantal S.* (1996) 13 Cal.4th 196, 913 P.2d 1075, 51 Cal.Rptr.2d 866)—this family law judge decided that he could reach the same outcome by applying only a portion of this code section, and then using the most extreme interpretation possible.

The family law judge ignored all of the precedent from this Court, all of the safeguards in the California Welfare and Institutions Code Section 300, and more than twenty years of decisions by appellate courts throughout California!

That is one reason why this Court must grant this petition—to correct a decision that rested on inadequate state law grounds and that conflicts with a United States Constitutional principle.

More than twenty years ago, this Court made it abundantly clear that parents enjoy a constitutionally protected interest in raising their children.

As this Court stated:

"The fundamental liberty interest of natural parents in the care, custody, and

> management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. A parental rights termination proceeding interferes with that fundamental liberty interest. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures."
> *Santosky v. Kramer* 455 U.S. 745, 752-754, 102 S.Ct. 1388, 71 L.Ed.2d 599, 50 U.S.L.W. 4333 (1982)

In Santosky, a New York Family Court permanently terminated the parental rights of John and Annie Santosky to their three children based on the "preponderance of the evidence" standard. The decision was affirmed.

However, this Court reversed the New York court, stating "The minimum standard is a question of federal law which this Court may resolve. Retrospective case-by-case review cannot preserve fundamental fairness when a class of proceedings is governed by a constitutionally defective evidentiary standard." id., pp. 754-757.

This Court found that the preponderance of the evidence standard was insufficient: "The 'fair preponderance of the evidence' standard prescribed by § 622 violates the Due Process Clause of the

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[1] The decision cited in Appendix B eliminates all visitation. However, subsequent orders by the same divorce judge—which cannot be ignored in this petition—also bar the father from talking to his son's school, doctor, or dentist. Needless to say, Webster does not know where his son goes to school, or who his son's doctor or dentist are, nor did anyone complain. This further demonstrates a divorce judge who made absurdly oppressive and unjust orders that defy commonsense.

Fourteenth Amendment." id., pp. 758-768, and this Court mandated a higher standard:

> "Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence. A 'clear and convincing evidence' standard adequately conveys to the factfinder the level of subjective certainty about his factual Conclusions necessary to satisfy due process. Determination of the precise burden equal to or greater than that standard is a matter of state law properly left to state legislatures and state courts." id., pp. 768-770.

In the present case, there is no doubt that the California family law court relied on the lesser—and improper—standard of "fair preponderance of the evidence." Indeed, only if the case had been accepted by a dependency court would the higher standard of clear and convincing evidence been applied (*In re Angelia P.* (1981) 28 Cal.3d 908, 623 P.2d 198, 171 Cal.Rptr. 637).

But no juvenile court wanted the case, the social worker from the Department of Child and Family Services found no abuse, and the family law judge was left to apply the lesser standard of "preponderance of the evidence" when he permanently terminated all contact between Webster and his teenage son.

Because California child custody orders are subject to modification at any time, the California court also claims that Webster's parental rights were not *permanently* terminated. Under California law, the court argued, Webster can return to family law court at any time and seek a modification.

This argument is utterly transparent.

To seek a modification of the custody order, Webster must demonstrate that a "significant change of circumstances" has occurred (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 913 P.2d 473, 51 Cal.Rptr.2d 444, *Burchard v. Garay* (1986) 42 Cal.3d 531, 724 P.2d 486, 229 Cal.Rptr. 800,*In re Marriage of Carney* (1979) 24 Cal.3d 725, 598 P.2d 36, 157 Cal.Rptr. 383).

However, since he has no contact at all with his son, nor is any information being given to him, Webster will never know when something has occurred that would allow him to seek a new custody order. And even if something significant did happen, and Webster somehow mysteriously found out, he would be returning to the same family law judge who refused to let him see or talk to his child in the first place!

The outcome is not in doubt. A California family law judge terminated Webster's parental rights, violating the precedent of this court and both Webster's and Wyeth's constitutionally protected liberty interests.

Furthermore, the delay inherent in Webster's future attempts to even talk to his son is unacceptable. As this Court has stated: "...if there is delay between the doing and the undoing petitioner suffers from the deprivation of his children, and the children suffer from uncertainty and dislocation." *Stanley v. Illinois* 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

In Stanley, an unwed father lost his children for the sole reason that he was not married to the mother when she died. The Illinois court declared his children wards of the State and placed them with court-appointed guardians. Peter Stanley appealed the decision to the Illinois Supreme Court, but lost. However, on review, this Court reversed the Illinois court.

Once again, this Court upheld a parents' constitutionally-protected rights to raise his children

despite the conduct of a state trial court.

In Stanley, this Court clearly defined the protection afforded to parents by stating that this constitutionally protected interest "undeniably warrants deference and, absent a powerful countervailing interest, protection." and that parents are "constitutionally entitled to a hearing on their fitness before children are removed from their custody." id. p. 651.

And in 1996, when this Court faced a state court that terminated yet another parents' rights, this Court again reversed.

In *M.L.B. v. S.L.J.* 519 U.S.102, 117 S.Ct. 555 (1996), M.L.B. was the mother of two children. After divorcing the father, S.L.J., her two children lived with the father. Several years later, S.L.J. returned to court and asked the Mississippi Chancery Court to terminate the parental rights of M.L.B. and to allow his new wife to adopt the children. The court did so. M.L.B. tried to appeal, but she could not afford the thousands of dollars in fees required to pay for the transcripts.

This Court stepped in and reversed the Mississippi court, holding that a state cannot prevent an indigent parent from appealing an order terminating parental rights because he or she cannot afford the fees to prepare the trial record.

Finally, though this Court does not yet have the record, the decision to permanently terminate all visitation between Webster and his teenage son was just plain wrong. When this Court reviews the trial proceedings, the mean-spirited and one-sided nature of the family law judge will be revealed.

Webster prays that this Court grant this petition and give clear guidance to the thousands of family law courts on an issue that affects the lives of millions of parents and children each year.

CONCLUSION

This Court must address the important question of child custody that has not been, but should be, settled.

Previous decisions by this Court clearly affirmed the rights of a parent to care, custody, and companionship of his child. However, a family court has violated those rights.

We ask this Court to review a state court decision that rested on inadequate state law grounds and that conflicted with this Court's prior decision.

We also ask this Court to recognize the enormous consequences of a state court completely terminating a father's parental rights, and using a transparent and wholly superficial argument as the basis for such a result.

With approximately 50% of all marriages ending in divorce, and millions of children being drawn into the aftermath of the failed relationship, the precedent setting power of this Court is crucial to protect not just the parents' rights to raise their children, but the children's rights to be raised by their parents.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Flowers
Attorney for Petitioner

APPENDIX A

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

In re the Marriage of Debra and Webster Watnik.	E031489 (Super.Ct. RFL06429)
Debra Kniesley, Respondent, v. Wwbster Watnik, Appellant.	OPINION January 23, 2003

Appeal from the Superior Court of San Bernardino County. Ben T. Kayashima, Judge. Affirmed.

John Flowers for Appellant.

Timothy Pittullo and Christopher R. Abernathy for Respondent.

Richard Pfeiffer, under appointment by the Court of Appeal, for minor.

When last we saw this case, we affirmed an order limiting Webster Watnik's visitation with his son, Wyeth Watnik, to one hour per month. While that appeal was pending, Webster and Wyeth had two visits--monitored, pursuant to the trial court's order, by a psychologist. There was to be no third visit. The psychologist resigned, blaming Webster's refusal "to be guided in his contact with Wyeth . . . ." At the request of Wyeth's counsel, the trial court ordered that Webster have no visitation or contact with Wyeth whatsoever. Webster appeals.

Webster had to file his briefs in this appeal before we had decided his previous appeal. Accordingly, he raises a number of contentions which he also raised in

that appeal -- and which, therefore, we have already rejected. Aside from these, Webster's major contentions are:

1. The order terminating visitation is not supported by sufficient evidence of changed circumstances.

2. The trial judge displayed bias.

We find no reversible error. Hence, we will affirm.

I. PROCEDURAL BACKGROUND

This case began as a proceeding for dissolution of the marriage between Webster Watnik and Debra Kniesley. Wyeth Watnik, born in 1989, was their only child. A dissolution judgment was entered in 1992.

On April 2, 2001, the trial court issued an order in which it found, among other things, that: (1) Webster had committed what the parties have referred to as the "kidnapping," in which he took Wyeth from Debra's house in the middle of the night without her knowledge; (2) Webster had lied in court by denying the "kidnapping"; and (3) Webster had made Wyeth sign written statements and tape-record oral statements making false accusations against Debra and against Wyeth's own counsel. The trial court concluded that Webster had inflicted "emotional abuse" on Wyeth and, moreover, that Webster was "a man without a sense of decency or morality" whose "character . . . is such that he is not to be entrusted in any fashion with the upbringing of the minor child, now or ever." It ordered that Webster have visitation for one hour per month, to be monitored by Dr. Charles R. Shipley, a psychologist. It further ordered that, "[a]side from this visitation, there shall be no contact between [Webster] and . . . Wyeth . . . ." It specifically defined "contact" as "any form of communication, directly or indirectly." It added that, "but for the wishes of the child, this Court would deny all visitation and contact between [Webster] and [Wyeth]." Webster filed a notice of appeal from this order (case No. E029628).

On or about July 3, 2001, Dr. Shipley stated that, due to "a serious family emergency," he could not serve as monitor. Therefore, on July 18, 2001, the trial court replaced Dr. Shipley with Dr. Anita Lampel.

On August 1, 2001, Dr. Lampel supervised the first visit between Webster and Wyeth. On September 12, 2001, she supervised a second visit. On October 9, 2001, she and Webster had an acrimonious meeting; after the meeting, she resigned.

On October 31, 2001, Webster filed an order to show cause, asking the trial court to appoint a new monitor, to eliminate monitoring after one month, and to increase his visitation. On November 7, 2001, Wyeth's counsel filed a responsive declaration, asking the trial court to terminate Webster's visitation entirely.

On November 26, 2001, the trial court held an evidentiary hearing at which both Webster and Dr. Lampel testified. At the end of the hearing, the trial court indicated that, once it received a copy of a videotape which the parties had agreed could be admitted, it would set a further hearing. On January 28, 2002, the trial court held such a further hearing. It then took the matter under submission.

On April 2, 2002, the trial court issued the order that is challenged in this appeal. It found that "[Webster's] conduct during the two monitored visitations constitute[d] emotional abuse upon . . . Wyeth." It also found that Webster had made "a concerted effort . . . to poison [Wyeth's] mind . . . against his [m]other." It further found that "a monitor is essential for any visitation but to do so would be meaningless in that [Webster] would not abide by any rules suggested by any monitor." It concluded that "[Webster's] conduct and . . . attitude . . . constitute a substantial change of circumstances" and that "it is in [Wyeth's] best interest . . . [t]hat all visitation and contact between [Webster] and [Wyeth] be terminated." Accordingly, it ordered that there be no contact

between Webster and Wyeth.

On September 13, 2002, we issued our opinion in case No. E029628. In it, we affirmed the order of April 2, 2001, in all respects. On December 4, 2002, we issued our remittitur.

II. FACTUAL BACKGROUND

A. August 1, 2001: The First Visit.

Webster and Dr. Lampel entered into a written agreement which provided: "[Webster] will be responsive to [Dr. Lampel]'s direction with regard to topics or areas which [Dr. Lampel], in her observation of the interaction between the parties, has deemed likely to be stressful. [Dr. Lampel] will let [Webster] know by stating, `Let's not go in that direction.' . . . [Webster] will not return to a discussion of that topic [or] area unless there has been a specific agreement between [Dr. Lampel] and [Webster] that he is able to do so."

On August 1, 2001, Dr. Lampel supervised the first visit between Webster and Wyeth. During the visit, there were these exchanges:

1. "[Debra] Cried All Night . . . ?"

"MR. WATNIK: . . . I got to see [Wyeth] when I called him as a witness.

"WYETH: Yeah. Boy that wasn't a fun one.

"MR. WATNIK: Yeah, so she cried all night the night before?

"DR. LAMPEL: Whoa, whoa, whoa, hold on. Let's -- you know what? Here's one thing I would like to do. . . . I would like to not have to talk about that court stuff, okay? Or Mom, all right? Is that -- is that okay with you?

"MR. WATNIK: Do you want to tell him the code word, the code phrase so he knows?

"DR. LAMPEL: What did we --

"MR. WATNIK: `Don't go there.'

"DR. LAMPEL: `Don't go there.' Okay. So my phrase -- my phrase is going to be, `Don't go there.' Okay?

"MR. WATNIK: If she says, `Don't go there,' I switch topics.

"DR. LAMPEL: That's right. Okay. So we'll just not, not, not go in that direction."

2. "The Lawyers Suck."

"WYETH: When I was sitting there in court, I said that from this, I'll never become a lawyer, and everybody just started laughing.

"MR. WATNIK: The lawyers suck. I mean, this is a fact."

3. "[Debra]'s Been Doing This for Years."

"MR. WATNIK: Now, is [Boy Scouting] something that you want to do?

"WYETH: Umm --

"MR. WATNIK: Yeah, right.

"WYETH: What I'd like to --

"DR. LAMPEL: (Inaudible.)

"MR. WATNIK: She's been doing this for years. I won't go there. I won't go there."

4. "And the Judge Blew Me Off."

"MR. WATNIK: He would not let me go watch you. I wanted to come watch you play tennis. Remember you said, `Dad, come and watch me play tennis.'

"WYETH: Yeah. . . .

"MR. WATNIK: . . . I wanted to come watch you play. And I said at the end, I said, `Hey, I want to come see my son play.' He said, `Come see, I want my dad to come see.' And the judge blew me off."

5. "The Problem Is Not Me."

"DR. LAMPEL: It seems for people who haven't seen each other for two years, it just seems to be going along quite swimmingly.

"MR. WATNIK: Because you don't know --

"DR. LAMPEL: As they say.

"MR. WATNIK: -- the history. There's --

"DR. LAMPEL: But you know what? And I -- that's okay. It just seems to be going along really well.

"MR. WATNIK: Well, yeah, it is just 'cause --

"DR. LAMPEL: You know, you guys like, you seem

to be liking the time that you're spending together and not having [--] no problem talking to each other.

"MR. WATNIK: We've never had any problems. The problem is not me.

"DR. LAMPEL: You know what?

"MR. WATNIK: Don't go there.

"DR. LAMPEL: Don't go there."

6. "If I Tell You Something, You Cannot Repeat It to Your Mom."

"MR. WATNIK: I can't tell you something, because -- if I tell you something -- . . . . . But if I tell you something, you cannot repeat it to your mom.

"DR. LAMPEL: Well --

"MR. WATNIK: No, he's got to do that[.]

"DR. LAMPEL: Well, you know what? Then why don't we do this? Let's save that for next time."

7. "I Can Explain to You How to Get Around Your Mom's Restrictions . . . ."

"MR. WATNIK: . . . I can't talk to you about some things right now, but I can explain it to you. I can explain to you how to get around your mom's restrictions on the computer."

8. "I Think [Debra]'s a Lesbian."

"WYETH: I've been meaning to ask you, have you gotten that second book out yet?

"MR. WATNIK: I have three books out. The joke book's been out for like a year.

"WYETH: I haven't seen it. I've been to Barnes and Noble several times. I still haven't seen it.

"MR. WATNIK: Go on Amazon.com. Look under my name. You'll see it.

"WYETH: Oh.

"MR. WATNIK: Place an order. Drive your mom crazy. Yeah, buy a book from your dad. Have your mom go nuts. It's a joke. It's a joke. I once made -- I once said -- can I tell her that joke?

"WYETH: Yeah.

"MR. WATNIK: Okay. . . . [H]e said that his mom was going to buy one of my books. I said, for everyone

else it's $21.95. For her it's like $10,000. And, hey, that was years ago. My legal fees have gone way past that. But, no, just go on Amazon.com. Look up me, and you'll see I have three books out there. . . .

"DR. LAMPEL: A joke book?

"MR. WATNIK: A divorce joke book. . . . Called Sex [W]ith [M]y Ex. I never wanted to have sex with my ex. I think she's a lesbian, but --

"DR. LAMPEL: Oh, come on. That's, you know, that's probably really not called for.

"MR. WATNIK: All right. We won't go there?

"DR. LAMPEL: That's really, really not called for. . .

"MR. WATNIK: Never mind, we won't go on with the conversation.

"DR. LAMPEL: Okay. Go ahead.

"MR. WATNIK: And then I did two other books. One was on child custody, and then one was just general divorce stuff, because my ex has spent so much time suing me over the years, and I've had four custody trials. I had to find a way to make money from it because it was just bankrupting me all the time. I was constantly broke.

"DR. LAMPEL: . . . Why don't you talk to him about something else now."

9. "[Debra]'s Always Going After Me for Money."

"WYETH: . . . [W]hat happened to that job you had? . . .

"MR. WATNIK: Oh, well, I left it.

"WYETH: Oh, I'm thinking (inaudible).

"MR. WATNIK: I can't -- there's things I can't tell you because they can't go back to your mom.

"WYETH: That's okay.

"MR. WATNIK: 'Cause she's -- it's about money and stuff. She's always going after me for money. So, I can't tell you things."

10. "I Can't Believe I Finally Got You Away From Your . . . Mother."

Webster gave Wyeth a birthday card, in which he had written: "Dear Wyeth, [h]appy 12th birthday. I

can't believe I finally got you away from your . . . mother. But then . . . I've been working on this for two years."

11. "I Can't Let Your Mom Get Her Hands on That Money."

Wyeth said he had gotten some money for his birthday which he wanted to deposit into his bank account. Webster responded: "I can't let your mom get her hands on that money."

12. "That's What [These Lawyers] Want[,] Is My Money."

"MR. WATNIK: . . . The problem I had with court is I had all these lawyers staring at me when we were talking about money. And that's what they want[,] is my money. So --

"DR. LAMPEL: Oh --

"MR. WATNIK: I won't go there.

"DR. LAMPEL: Let's try really, really, really hard, really hard --

"MR. WATNIK: Lawyers are money, which is what they want --

"DR. LAMPEL: -- to not -- yeah --

"MR. WATNIK: Lawyers --

"DR. LAMPEL: -- to not do lawyers, not do money, and not do court. . . .

"MR. WATNIK: Lawyers have been in our lives for years and years and years. Okay."

13. "[Debra]'s Going to Take [Your Toys] Away."

Regarding some Lego Bionicles he had brought for Wyeth, Webster commented: "Just because I kind of think that if I send these with you, with your mom, they won't come back. I'll hang onto these, okay?"

Later, again regarding the Bionicles, Wyeth said:

"WYETH: . . . [I]n my room, I don't really have a bedside table to play with my Legos on . . . . So, I have my bathroom spot where I have all my Legos . . . . And basically if these went home with me, they'd go straight to the bathroom, basically.

"MR. WATNIK: Yeah, she's going to take them away

from you. so I --

"DR. LAMPEL: Uh --

"WYETH: She wouldn't take them."

B. September 12, 2001: The Second Visit.

On September 12, 2001, Dr. Lampel supervised the second visit between Webster and Wyeth. During the visit, there were these exchanges:

1. "[Debra]'s Going to Rush into Court and Try to Stop This."

"MR. WATNIK: Is your mom cooperating in bringing you here okay?

"WYETH: Yeah. . . .

"MR. WATNIK: . . . I don't know how long this is going to go on before she tries to stop it in court. But I'll take as long as --

"DR. LAMPEL: Let's not make -- tell you what. Let's try really hard not to make negative comments about mom, because -- only because it puts him in a bad position. He's got no control over this.

"MR. WATNIK: Right. Well --

"DR. LAMPEL: If you want to say those things, say them to me outside of this hearing. I'll be happy to listen.

"MR. WATNIK: Okay. Well, I don't know how long these sessions are going to last because I don't know when she's going to rush into court and try to stop this."

2. "[Wyeth] Was My Ex-Wife's Sole Witness."

"MR. WATNIK: I want -- I want to get some more time with you than once a month. How do you feel about that?

"WYETH: Yeah, this is getting long.

"MR. WATNIK: What?

"WYETH: This is getting long in between. . . .

"MR. WATNIK: Well, how about if we talk on the phone or something.

"[WYETH]: That would be good.

"DR. LAMPEL: I -- you better -- you need -- tell you what --

"MR. WATNIK: I'm just trying to get if he's interested in more time.

"DR. LAMPEL: If he's interested in more time.

"MR. WATNIK: Well, he told the judge that he really wanted like regular visitation, like every other weekend and they just ignored him completely.

"DR. LAMPEL: Well --

"MR. WATNIK: So, I'm just asking him now what he wants.

"DR. LAMPEL: Okay and --

"MR. WATNIK: Listen, this is really the essence. There's a lot of substance here. I mean we can -- if we just don't even get at it, there's a lot of problems that have to be addressed.

"DR. LAMPEL: That's true. And see the -- the -- all -- all I want is to make sure that, you know, it's fine if you ask him a question, he says he'd like to see you more, that's okay.

"MR. WATNIK: Right. That's all I was asking.

"DR. LAMPEL: Well, what I don't want -- yeah, what I don't want is to get -- is to get involved in substantive issues about court and things like that with him in the room because he's got zero control over it, and all it's going to do is make him feel uncomfortable.

"MR. WATNIK: Oh, no[,] no. Well, I think you're wrong there because actually --

"DR. LAMPEL: Okay, but I think he -- but I don't want him to be uncomfortable.

"MR. WATNIK: What he says is very important.

"DR. LAMPEL: But I don't want him to be uncomfortable. I don't want him to be uncomfortable or stuck in the --

"MR. WATNIK: Remember, he was my ex-wife's sole witness in court.

"DR. LAMPEL: Or stuck in the middle.

"MR. WATNIK: He was her sole witness.

"DR. LAMPEL: I understand. But I don't want him to feel bad or stuck in the middle.

"MR. WATNIK: Well, ask him how he feels.

"DR. LAMPEL: I asked him before, and I think it would be a good idea if we just stayed away from things that put him in the middle."

3. "[Debra] Is Trying to Get Rid of Me."

"MR. WATNIK: Now, you're sitting here looking perfectly safe and this is exactly what we do at home.

"WYETH: Yeah.

"MR. WATNIK: That's what I said. Nobody'd listen to me. What you said, nobody'd listen to you. . . .

"WYETH: You said you had four computers hooked up?

"MR. WATNIK: Yes.

"WYETH: I want to check that out. That sounds really --

"MR. WATNIK: Oh, I want you to come home big time. You can come home.

"WYETH: That sounds really fun.

"MR. WATNIK: . . . [I]n four years, you're driving a car. This is -- the whole thing about everybody else telling us when you can see me and when I can see you. At some point, you're going to be too big for all this nonsense.

"WYETH: Yeah.

"MR. WATNIK: So, they're able to control it now, but that won't last indefinitely.

"DR. LAMPEL: Once you're 18 --

"MR. WATNIK: And yeah, in six years, even the judge can take a hike. But between now and then you'll get too big to where there's not much they can do to tell you what to do if you don't want to do it.

"WYETH: Yeah.

"MR. WATNIK: And I'm just -- I'll tell you my plan here is to hang in. She is trying to get rid of me and I am not going to go away."

4. "Are You Saying . . . Things That [Debra] Wants You to Say?"

"MR. WATNIK: Listen, I'm going to try -- get it to where we can definitely have more time. But you know, I'll go say it in court, they'll -- and it will turn

into a big battle. Anyway, you could do me a big favor the next[] time -- What[?]

"WYETH: Do me one favor. Don't pull me in again. I don't want to be in there again.

"MR. WATNIK: Don't pull you in again?

"WYETH: No.

"MR. WATNIK: Well, geez, you said that I kidnapped you. Thanks a lot, son. Why did you say that?

"WYETH: I don't know.

"MR. WATNIK: Why didn't you tell them you snuck out?

"DR. LAMPEL: I tell you -- you know what --

"MR. WATNIK: Okay.

"DR. LAMPEL: Please.

"MR. WATNIK: Well, he was -- he was --

"DR. LAMPEL: Please, please.

"MR. WATNIK: The judge pulled him in, by the way. I didn't. I pulled him in afterwards.

"DR. LAMPEL: Okay. Yeah, you know, don't --

"WYETH: Don't make me come in. That was --

"MR. WATNIK: Okay. I won't make you -- I (inaudible) -- but how are they going to hear --

"DR. LAMPEL: Please, don't put him on the spot.

"MR. WATNIK: Well, the judge pulled him in and put him under oath.

"DR. LAMPEL: Don't put him on the spot right now.

"MR. WATNIK: Oh, okay. All right. All right.

"DR. LAMPEL: Thank you.

"MR. WATNIK: So, anyway, so how are they going to know what you want if you don't go in?

"WYETH: Those back things behind were okay. Just I don't want to be in court again in the big room. That was just not fun.

"MR. WATNIK: Okay. Well, what was it like? I mean what? What? You said it wasn't fun. I mean --

"WYETH: It was just like not fun at all. It's just like [,] I don't know. It's --

"DR. LAMPEL: Stressful?

"WYETH: Stressful, yeah.

"MR. WATNIK: Stressful? Yeah, I'm sure it was stressful, 'cause you were in there talking to the judge and saying a lot of things.

"WYETH: Yeah, very stressful.

"DR. LAMPEL: Even grown[-]ups don't like it.

"MR. WATNIK: You know -- you know -- did, I mean -- did -- did --are you saying some of the things that your mom wants you to say?

"DR. LAMPEL: Excuse me. . . . I'm really going to stop you. I'm going to end the session if we cannot just talk about other things --

"MR. WATNIK: We have.

"DR. LAMPEL: -- besides what he said in court. You're smart. I'm smart. I thought I was being pretty clear about where I didn't want you to go with this. Please stop it. You're only putting him on the spot. You're making him explain things that happened, and you're making him feel bad. Please don't do that."

5. "You Can Call Anytime."

"MR. WATNIK: So, just to let you know, I want to see you big time. I'm fighting to get you big time. I spent years fighting to get you. And you know what? If -- if these get cut[ ]off, or something happens, it wasn't me. You can figure out who that means, but it wasn't me.

"WYETH: Yeah.

"MR. WATNIK: 'Cause I think, I don't think --

"DR. LAMPEL: Well, it wasn't me, either.

"MR. WATNIK: Well, that leaves one person, doesn't it?

"DR. LAMPEL: Two out of the three people in this room. . . .

"MR. WATNIK: Well, it wasn't Wyeth either. It's not somebody in this room.

"DR. LAMPEL: I -- time for you[] to say bye. Okay.

"MR. WATNIK: You know what? So I think you're allowed to call me.

"DR. LAMPEL: I don't know.] . . .]

"MR. WATNIK: You can call anytime. I think you're

allowed to call me. I think if I call you, I get into trouble, but I don't think there's anything about you calling me.

"WYETH: Yeah.

"MR. WATNIK: And believe me, if you do it, and they don't like it, fine. They'll take me to court. Until then, I think you can do it.

"WYETH: Well, I don't like using the phone that much, but if --. . .

"DR. LAMPEL: So, if he doesn't call you, it's not because he doesn't care about you.

"WYETH: I'm not really much of a phone person.

"MR. WATNIK: Well, I know that his mom also gets mad at him."

6. "[Debra] Won't Do Anything With [Your Toy]?"

"MR. WATNIK: (Inaudible.) All right, [d]ude. You taking the Bionic[le]? (Inaudible.)

"WYETH: Don't worry. I'll keep it.

"MR. WATNIK: She won't do anything with it?

"WYETH: This is going right into my collection ...."

C. October 9, 2001: Webster's Meeting with Dr. Lampel.

On October 9, 2001, at Webster's request, Dr. Lampel met with him privately. He accused her of "being used by the [c]court to hurt a child." He told her that Wyeth had lied under oath; that Debra, aided and abetted by the trial court, had made him do so; that this constituted emotional abuse; and therefore, when Webster had asked Wyeth why he had testified as he did: "If your job is to stop emotional abuse, you should have kept your mouth shut at that point and let Wyeth answer that question."

Dr. Lampel offered to resign. Webster responded: "I didn't appoint you. I didn't pick you. I don't care whether you're on the case or not. I'll do this to the next shrink and the next one because when you find out the facts, if you're doing your job properly, you'll say, 'This case is no good.' That's why the last shrink turned it down. . . . All kinds of people have come in

and looked at this and said, 'This stinks,' and have walked away from it."

At the end of the meeting, Dr. Lampel resigned. In a letter to the trial court, she explained: " . . . Mr. Watnik advised me that I was the cause of emotional harm to his son, and that I had 'no right' to control [the] specific content of his statements to Wyeth. Under these circumstances[,] in which Mr. Watnik has declined to be guided in his contact with Wyeth, I can no longer serve as supervisor."

III. ISSUES WEBSTER RAISED OR SHOULD HAVE RAISED IN THE PREVIOUS APPEAL

In this appeal, Webster raises several challenges to the trial court's previous April 2, 2001, order. He argues that it was unduly "oppressive and restrictive." He also argues that it was "fatally vague" because it did not give the monitor any instructions. We affirmed that order, however, in Webster's previous appeal. It is too late for him to mount any new attack against it. (Cal. Rules of Court, rule 2(a).)

Webster also raises several contentions with regard to the 2002 order which he raised in his previous appeal with regard to the 2001 order. We reject each of these contentions now for the same reasons as in our previous opinion, and also based on the law of the case (see generally People v. Stanley (1995) 10 Cal.4th 764, 786-787):

1. The trial court lacked jurisdiction to deny any visitation at all. We rejected this contention in our previous opinion. (Watnik v. Watnik (Sept. 13, 2002) E029628 [nonpub. opn.] typed opn. pp. 28-29 (hereinafter Opn.).)

2. The trial court erred by denying reunification services. We rejected this contention in our previous opinion. (Opn. at p. 30.)

3. The trial court erred by disregarding Wyeth's stated desire for more visitation. We rejected this contention in our previous opinion. (Opn. at pp. 29-

30.)

4. The trial court erred by finding emotional abuse, partly because it failed to use the appropriate legal standard of emotional abuse, and partly because there was insufficient evidence of emotional abuse. To the extent Webster is arguing that the trial court failed to use the appropriate legal standard, we rejected this contention in our previous opinion. (Opn. at p. 21.) Moreover, to the extent Webster is arguing that there was insufficient evidence of emotional abuse in the record leading up to the 2001 order, we rejected this contention in our previous opinion. (Opn. at pp. 27-28.)

We will now turn to Webster's contention that there is insufficient evidence of emotional abuse following the 2001 order and before the 2002 order in the record.

IV. CHANGED CIRCUMSTANCES

Webster contends there was insufficient evidence of changed circumstances to justify terminating his visitation.

"Under California's statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child. The court and the family have `the widest discretion to choose a parenting plan that is in the best interest of the child.' (Fam. Code, § 3040, subd. (b).) When determining the best interest of the child, relevant factors include the health, safety and welfare of the child, any history of abuse by one parent against the child or the other parent, and the nature and amount of contact with the parents. ([Fam. Code,] § 3011.)" (Montenegro v. Diaz (2001) 26 Cal.4th 249, 255, fn. omitted.) However, "[u]nder the so-called changed circumstance rule, a party seeking to modify a permanent custody order can do so only if he or she demonstrates a significant change of circumstances justifying a modification. [Citation.]" (Id. at p. 256.)

"The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test. [Citation.]" (In re Marriage of Burgess (1996) 13 Cal.4th 25, 32.) "The test is not whether this court would have made the same order or whether the trial court could have reasonably made some other order, but `whether the trial court could reasonably have concluded that the order in question advanced the "best interest" of the child.' [Citation.]" (Lester v. Lennane (2000) 84 Cal.App.4th 536, 595, quoting In re Marriage of Burgess, supra, at p. 32.) "If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence. [Citations.] When substantial evidence supports the trial court's factual findings, the appellate court reviews the conclusions based on those findings for abuse of discretion. [Citation.]" (People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc. (1999) 20 Cal.4th 1135, 1143-1144.)

The trial court's order was based on Webster's "conduct and attitude" during the visits in Dr. Lampel's office. Before these visits, he had not had any visitation with Wyeth for about two years, and his earlier visitation had not been monitored. Moreover, just before these visits, the trial court found that he had engaged in significant misconduct which warranted only limited and monitored visitation. In sum, Webster was on probation. The trial court was watching to see whether he could have visitation without emotionally abusing Wyeth.

He failed miserably. The monitor placed reasonable -- indeed, almost self-evident -- limitations on Webster's conversation with Wyeth: "[T]o not do lawyers, not do money, and not do court" -- and, of course, to not do Debra. These were consistent with the law that, unless otherwise ordered by the court, any order for supervised visitation requires the supervisor to "[a]llow no derogatory comments about

the other parent" and to "[a]llow no discussion of the court case . . . ." (Cal. Stds. Jud. Admin., § 26.2(i)(6) & (7).)

Webster, however, would not or could not control himself. He insisted on complaining to Wyeth about Debra, about the trial court, and about the lawyers. Even worse, he kept trying to get Wyeth to take sides. For example, he asked Wyeth to keep things they talked about a secret from his mother. He suggested, albeit jokingly, "Drive your mom crazy. Yeah, buy a book from your dad." He expressed resentment over Wyeth's previous testimony against him.

Webster argues that particular statements he made were factually accurate. This is irrelevant; Webster should not have been raising the issues encompassed in those statements around Wyeth. The trial court could reasonably find that this was emotional abuse.

One of the statements which Webster argues was factually accurate was his statement that Wyeth was allowed to call him. The trial court's 2001 order, however, prohibited contact between Webster and Wyeth without regard to who initiated the contact. Moreover, even if it had only prohibited Webster from contacting Wyeth, it would still have been improper for Webster to ask Wyeth to call him; in that scenario, Webster would still have been initiating the contact, no matter how indirectly.

Webster argues that the trial court took "snippets" of his conversations with Wyeth out of context and thus ignored the fact that they also discussed numerous other subjects -- school, friends, summer activities, Legos, digital watches, contact lenses, books, movies, and more. We disagree. We have quoted from the transcript at length (some might say excessive length) to demonstrate that Webster's inappropriate remarks have not been taken out of context. Indeed, given the many other subjects he could have been talking to Wyeth about, his almost compulsive insistence on returning, over and over

again, to prohibited and emotionally distressing subjects was simply inexcusable.

Webster claims that Dr. Lampel admitted that he did not emotionally abuse Wyeth. Not so. He asked her whether he had committed emotional abuse "as defined in the California codes." He was referring to the legal standard necessary to show "emotional damage" under Welfare and Institutions Code section 300, subdivision (c). She responded, "There w[as] nothing that would have risen to the level of emotional abuse as defined in the Welfare & Institutions Code." (Italics added.) As we held in our previous opinion, however, this statutory definition is irrelevant. The trial court quite properly found that Webster had inflicted "emotional abuse" as that term is commonly understood.

Webster also seems to think that, if Dr. Lampel did not object to a particular remark, the trial court could not rely on that remark as a basis for its order. The monitored visitation, however, was not a game, and Dr. Lampel was not an umpire. Regardless of whether she called Webster "safe" when she should have called him "out," the trial court was entitled to watch a replay on video and to make up its own mind.

Webster also claims that "Wyeth displayed no stress or [un]happiness based on anything Webster said or did." We note, however, that even on the cold record, Wyeth showed some signs of discomfort. For example, he would respond to many of Webster's more outrageous remarks in a conciliatory fashion, but he would not attempt to pursue the subject. Once, he kept trying to change the subject back to the four computers Webster had at home, but in vain. In any event, this argument merely presents an issue of fact which the trial court has already resolved.

Webster claims he "always cooperated" with Dr. Lampel; he argues that whenever she told him to change the subject, he did so. This is not entirely true. Several times, particularly in the second visit, when

she tried to cut him off, he argued with her. More important, however, even though he would usually change the subject, either he would bring it up again or he would bring up some other equally inappropriate subject.

The trial court found that Webster "would not abide by any rules suggested by any monitor." It cited his statement to Dr. Lampel: "I don't care whether you're on the case or not. I'll do this to the next shrink and the next one . . . ." Webster argues that Dr. Lampel had exceeded her authority and that he was justified in "criticizing" her. If we were the trier of fact, we would disagree; we would say that Dr. Lampel was, if anything, too lenient. Still, this was an issue for the trier of fact, and not for us.

Finally, Webster argues that the trial court could not treat his "attitude" as a changed circumstance. He cites no authority for this position, however, and he supports it with adjectives (e.g., "astonishing," "vengeful," "outrageous") rather than with reasoned argument. We deem this argument waived.

In sum, we conclude that there was substantial evidence that, even if Webster had only monitored visitation, he would emotionally abuse Wyeth by making him choose sides with regard to Debra, the custody proceedings, and even Wyeth's own former testimony. The trial court did not abuse its discretion by finding that this was a significant change of circumstances which justified the complete termination of Webster's visitation.

V. JUDICIAL BIAS

Webster contends the trial judge was biased against him. He waived this contention by failing to file a disqualification motion (see Code Civ. Proc., § 170.3, subd. (c)(1) [claim that judge is disqualified must "be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification"]; People v. Scott (1997) 15 Cal.4th

1188, 1207) and therefore also by failing to seek writ review following the denial of any such motion. (People v. Barrera (1999) 70 Cal.App.4th 541, 547-552.)

Actually, it is pretty clear that Webster was trying to play games with this issue. Take, for example, this exchange:

"MR. WATNIK: . . . You laid the foundation yourself for those tapes. So I ask a third party, who is neutral and does not demonstrate bias, someone who is acting as a neutral umpire, and someone who is not acting as a --

"THE COURT: If you think I'm biased, you should file a 170.1.

"MR. WATNIK: I've weighed the motion repeatedly. And I will file it if I choose to.

"THE COURT: Then do I take it that is an oral motion for 170.1?

"MR. WATNIK: I will not allow you to manipulate me into making --

"THE COURT: I take it that is not a 170.1; is that right?

"MR. WATNIK: Your Honor, I stand exactly on my words, no others.

"THE COURT: I'll make a finding as far as I'm concerned there's no 170.1 on the table at this point. Your indication that I'm `biased,' quote, close quote, . . . is denied."

Just minutes later, Webster took up the cudgel again:

"MR. WATNIK: You're clearly favoring the lawyers.

"THE COURT: Any time you wish file the motion --

"MR. WATNIK: I want to make a clear record of bias that you're favoring the lawyers.

"THE COURT: I suggest if you feel I'm biased, you file a 170.1 motion . . . .

"MR. WATNIK: Judge, I'm going to make a clear record of your continuing bias. You continue to be biased toward the lawyers.

"THE COURT: Needless to say, I continue to deny

the bias as you attribute it to me."

The whole point of the waiver rule is to prevent precisely this kind of gamesmanship. " . . . 'It would seem . . . intolerable to permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.'" (Caminetti v. Pac. Mutual L. Ins. Co. (1943) 22 Cal.2d 386, 392, quoting Lindsay-Strathmore Irr. Dist. v. Superior Court of Tulare County (1920) 182 Cal. 315, 338 (conc. opn. of Olney, J.).) We therefore do not consider this contention.

Meanwhile, to demonstrate the trial court's supposed bias, Webster has supplied a laundry list of instances in which it assertedly committed error against him. However, he has not raised these asserted errors, either individually or collectively, as independent grounds for reversal. Moreover, he has not supported any of them with any reasoned legal argument or citation of authority. We therefore also do not consider whether these were, in fact, errors at all. (Golden Day Schools, Inc. v. Department of Education (1999) 69 Cal.App.4th 681, 695.)

VI. DISPOSITION

The order appealed from is affirmed. Respondent shall recover costs on appeal against Webster.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/RICHI, J.

We concur:

s/HOLLENHORST, Acting P.J.
s/GAUT, J.

APPENDIX B

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

FILED - West District
San Bernardino County Clerk

In re the Marriage of	RFL06429
DEBRA K. KNIESLEY, Petitioner, v. WEBSTER WATNIK, Respondent.	FIRST AMENDED STATEMENT OF DECISION AND ORDER APRIL 2, 2002

FIRST AMENDED STATEMENT OF DECISION AND ORDER

Respondent, Webster Watnik's Order to Show Cause for modification filed on October 31, 2001 came on regularly for an evidentiary hearing on November 26, 2001. An additional Order to Show Cause for Modification filed by Respondent, Mr. Webster Watnik, on January 14, 2002 came on regularly for an additional evidentiary hearing together with the Order to Show Cause filed on October 31, 2001, on January 28, 2002, in Department R-12 of the above-entitled court, the Honorable Ben T. Kayashima, Judge presiding. Respondent, Mr. Webster Watnik, was in court in pro per. Petitioner, Debra K. Watnik (Kneisley) never appeared personally in court but was represented by Mr. P. Timothy Pittullo, Esq. at all times. Wyeth Watnik, the minor child, never appeared personally in court, but was represented at all times by minor's counsel, Mr. Michael Darlington, Esq. After consideration of the evidence, both oral and documentary, the arguments of counsel and

Respondent, Mr. Webster Watnik and the matter having been submitted to this Court for decision on January 28, 2002, the Court makes the following findings and orders.

FINDINGS

1. The Order to Show Cause re: Modification filed October 31, 2001 by the Respondent, Mr. Webster Watnik, requested the following:
(a) Issue a Statement of Decision pursuant to Code of Civil Procedure §632.
(b) Award fees pursuant to Family Code §2030;
(c) Move visitation to Saturdays and Sundays;
(d) Increase visitation four (4) hours every month (a step-up order);
(e) Eliminate monitoring after one month; and,
(f) Appoint the following monitor: Charlie Dietz, Correctional Officer, California Institution for Men, Chino, California.

2. The Order to Show Cause re: Modification filed by Respondent, Mr. Webster Watnik, on January 14, 2002, requested the following:
(a) Issue a Statement of Decision pursuant to Code of Civil Procedure §632;
(b) Move visitation to every Saturday and Sunday;
(c) Increase visitation to two (2) days per week;
(d) Eliminate monitoring.

3. Mr. Darlington, minor's counsel, filed a response on November 7, 2001 requesting that all visitation be terminated. Mr. P. Timothy Pittullo, representing the Petitioner/Mother, did not file a written response; however, he orally joined and took the same position as minor's counsel, to wit: that all visitation should be terminated.

4. This Court on April 2, 2001, made the following orders:

1. Petitioner/Mother shaft retain the sole legal and physical custody of Wyeth, born July 27, 1989.

2. Respondent/Father shaft have monitored

visitation with Wyeth for a period of one hour per month commencing August, 2001. Visitation shall be held at the office of Charles R. Shipley, Ph.D., located at 372 West 16th Street, San Bernardino, California; phone number 909-886-4868. Aside from this visitation, there shaft be no contact between Respondent/Father and the minor child Wyeth and no contact between Respondent/Father and Petitioner/ Mother. Respondent/Father shaft pay for the psychologist's fees and arrange to do so one month prior to the first visitation and one month prior to any and all subsequent visitation. If Respondent/Father does not do so, the visitation for that time period will be forfeited.

3. The minor's counsel will continue to be Mr. Michael Darlington; Esq. His telephone numbers are 530/221-27'00 and 530/527-2336. Any and all information requested by the Respondent in regards to the minor child Wyeth shaft be directed to the minor's counsel. Minor's counsel is directed to arrange and coordinate the monthly visitation among the psychologist, the minor child Wyeth, and Respondent/ Father.

5. The designated monitor, to wit: Charles R. Shipley, Ph.D. declined to act as the monitor. That on the 1st day of August 2001, Dr. Anita Lampel agreed to act as the monitor for the monthly visitation.

6. That pursuant to the order of April 2, 2001, two monitored visitations took place. More specifically, the first visitation took place on August 1, 2001 and the second visitation took place on September 12, 2001.

7. The two monitored visitations were videotaped. See Exhibit A for the August 1, 2001 visitation and see Exhibit B for the September 12, 2001 visitation.

8. That prior to the initial visitation, Dr. Anita Lampel and Respondent, Mr. Webster Watnik, entered into an agreement together with an addendum on August 1, 2001. See Exhibits D and E.

9. That after two monitored visitations took place

but before the third scheduled monitored visitation in October, 2001, a meeting was held between Dr. Anita Lampel and Respondent, Mr. Webster Watnik, to discuss how the monitored visitations should proceed. This was also videotaped. See Exhibit C. As result of said meeting, Dr. Anita Lampel sent to this Court a letter dated October 9, 2001, stating in part ... "Under these circumstances in which Mr. Watnik has declined to be guided in his contact with Wyeth, I can no longer serve as supervisor..." See Exhibit 59.

10. There has been no monitored visitation pursuant to the Court's order since September 12, 2001.

11. During the monitored visitations with his minor son, the Respondent, Mr. Webster Watnik made the following comments either to the minor son or in his presence:

(a) Denigrating remarks of the minor's mother such as ... "1 never wanted to have sex with my ex. I think she's a lesbian..." (See Official Court Reporter's transcript, p. 52, In. 17-18)

(b) Blaming minor's mother for the lack of visitation ... "1 can't believe I finally got you away from your Mom ..." (See Court Reporter's transcript, p.61, In. 4-6)

(c) The minor's mother could not be trusted with the son's monies ... "1 can't let your Mom get her hands on that money..." (referring to the minor son's money). (Court Reporter's transcript, p. 71, In. 21-22)

(d) Or the minor's mother be trusted with the minor son's toys that the Respondent would give him ... "Just because I kind of think that if I send these with you, with your Mom, they won't come back." (Court Reporter's transcript, p.70, In.6-8);

All references to the Official Court Reporter's transcript referenced herein will be referred to as Court Reporter's transcript. The transcript deals with the videotaped sessions and more particularly Exhibits A, B & C.

(e) To disrespect lawyers ... "Lawyers suck" (Court

Reporter's transcript, p. 30, In. 25) ... "The problem with the Court is I had all these lawyers staring at me when we were talking about money and that's what they want is my money ..." (Court Reporter's transcript, p. 73, In. 6-8)

(f) To disrespect judges ... "And judge blew me off ..."; and "Yeah, in six years even the judges can take a hike ..." (Court Reporter's transcript, p. 124, In. 25, 26)

(g) To disrespect court orders by suggesting to his son that he disobey the court order that says in part: "Aside from this visitation, there shall be no contact between Respondent/Father and the minor child, Wyeth ..." by suggesting to his minor son "You can call anytime, I think you're allowed to call me. I think if I call you I get into trouble, but I don't think there's anything about you calling ... and believe me if you do it and they don't like it, fine they'll take me to court. Until then, I think you can do it." (Court Reporter's transcript, p. 167, In. 23 through p. 168, In. 4)

(h) Complaining to his son about his previous testimony in regards to the subject of kidnapping and suggesting to his son as to whether his Mom coached him ... "Well geez, you said that I kidnapped you. Thanks a lot, son. Why did you say that?..." "Why didn't you tell them you snuck out?" (Court Reporter's transcript, p. 126, In. 17-20) "Stressful? Yeah, I'm sure it was stressful, 'cause you were in there talking to the Judge and saying a lot of things.., you know-you know-did, I mean-did-did-are saying some of the things that your Mom wants you to say." (See Official Court Reporter transcript, p. 127, In. 24-26, p. 128, In. 3-5.

12. One of the specific finding requested by the Respondent, Mr. Webster Watnik, in the Statement of Decision was to wit: "Allegations made by Darlington that I 'prep'(ed) the minor for a round of future litigation as evidenced by the transcript." p. 176 of the Official Court Reporter's transcript of these

proceedings, starting at Line 21 through page 177 Line 3 the following passage appears while Respondent, Mr. Watnik, is talking to Dr. Anita Lampel which again was videotaped marked Exhibit C, on 9th day of October, 2001, and it is as follows: "The second thing is I can always go back to court at any time. I mean custody is one of those things, my ex-wife filed lots of motions against me. You can do that. But there is an element of unreliability in the child's testimony here that is important that it get included in the appeal because if it doesn't, the appeal has really been a waste of time, and I'm back in on a modification arguing that Wyeth's statements were not fully reliable at the last trial." The Court finds that the Respondent, Mr. Webster Watnik, did indeed use part of his time during his visitation with his son in an attempt to "'prep'(ed)" the minor child's testimony that he gave to this Court on the subject of "kidnapping," for the purposes of his present appeal.

13. Minor child, Wyeth Watnik, expressed a desire for expanded visitation with his father, the Respondent, Mr. Webster Watnik. (Court Reporter's transcript, p. 114, In. 5-11 and p. 65, In. 9-26; p. 167, In. 1-6)

14. Dr. Anita Lampel stated that Respondent, Mr. Webster Watnik's conduct during his two (2) visitations with his son, did not rise to the level of "Emotional abuse". The statement was in response to a question asked by Respondent, Mr. Webster Watnik, during his cross-examination of her. The phrase "Emotional abuse" was defined within the parameters of Welfare and Institution Code §300(c).

15. This Court finds that Respondent, Mr. Webster Watnik's conduct during the two monitored visitations constitute emotional abuse upon the minor child, Wyeth. This Court further finds a concerted effort on the part of Respondent, Mr. Webster Watnik, to poison the mind of the minor child, Wyeth, against his Mother.

16. On the issue of attorney fees, Respondent, Mr. Webster Watnik, did not provide to this Court an updated income and expense declaration. Further, upon cross-examination of the Respondent, Mr. Webster Watnik, he was evasive and non-responsive in his answers pertaining to his income and expenses. Accordingly, this Court finds that the Respondent has not sustained his burden of showing a need for attorney fees pursuant to Family Code §2030.

17. The remaining issue is whether this Court should appoint a monitor of the Respondent's choosing or whether there should be a monitor appointed at all. This Court finds that during the two monitored visitations, Dr. Anita Lampel, found it necessary to admonish the Respondent, Mr. Webster Watnik, approximately a dozen times to change the topic of conversation with his minor son, Wyeth in order to avoid Putting his son "on the spot." Further, Respondent, Mr. Webster Watnik, in his discussion with Dr. Anita Lampel states ... "1 don't care whether you're on the case or not. rll do this to the next shrink and the next one..." (Court Reporter's transcript, p. 182, in. 1-2)

18. This Court finds that a monitor is essential for any visitation but to do so would be meaningless in that Respondent, Mr. Webster Watnik, would not abide by any rules suggested by any monitor. He has not abided by any court orders unless it suited him, and clearly would not do so in the future.

19. On April 2, 2001, this Court made certain findings about the Respondent, Mr. Webster Watnik, and more particularly as follows:

The Court finds that the Respondent/Father was not credible during his testimony in this trial. This Court further finds that the Respondent/Father has demonstrated extremely poor judgment, not only during the course of this trial, but also extremely poor judgment involving.' the minor child, Wyeth, in his elaborate scheme of laying a foundation of lies in his

campaign against minor's counsel, Ms. Courtney, and the Petitioner/Mother, Ms. Kniesley. The campaign that was motivated not so much for his love for his chi/d, Wyeth, but rather his attempt to be in controlmtotal control of the Petitioner/Mother and of his child and to do so, to get rid of minor's counsel, Ms. Elizabeth Courtney, who he perceived to be his enemy.

It is clear to this Court that Respondent/Father did not care enough to consider the consequences of his actions on the emotional well being of the minor child. It is obvious that there is a reason why Wyeth cannot or refuses to recollect certain events. This Court finds that it is the product of emotional abuse inflicted upon Wyeth by the Respondent/Father, and it is but one example of such abuse.

This is a man without a sense of decency or morality. No amount of classes for parenting and anger management or therapy sessions with a licensed psychologist that may be ordered by this Court would be of any value. This Court finds that the Respondent will continue to present a danger to the emotional well being of the minor child. The character of the Respondent is such that he is not to be entrusted in any fashion with the upbringing of the minor child, now or ever.

20. This Court finds that this Court's finding previously made on April 2, 2001 still true, but clearly was an understatement. The Respondent, Mr. Webster Watnik, knowing he was being videotaped and monitored conducted himself with his minor child, Wyeth, in a manner that should not be tolerated by any court and certainly this Court does not.

21. That the conduct and the attitude of the Respondent, Mr. Webster Watnik, constitute a substantial change of circumstances.

22. That despite the wishes of the minor child, Wyeth, to expand his visitation with his father, this Court finds that it is in the best interest of the minor

child, Wyeth, that the sole and physical custody remain with the Petitioner. That all visitation and contact between Respondent, Mr. Webster Watnik and the minor child be terminated.

ORDERS

1. Petitioner/Mother shall retain the sole legal and physical custody of Wyeth, born July 27, 1989.

2. Respondent/Father's visitation with Wyeth is terminated. There shall be no contact between Respondent/Father and the minor child, Wyeth, and no contact between Respondent/Father and Petitioner/Mother.

3. The minor's counsel will continue to be Mr. Michael Darlington, Esq. His telephone numbers are 530/221-2700 and 530/527-2336. Any and all information requested by the Respondent in regards to the minor child Wyeth shall be directed to the minor's counsel.

4. All previous orders made by this Court shall remain in full force and effect.

DATED: April 2, 2002

s/BEN T. KAYASHIMA
Judge of the Superior Court

APPENDIX C

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Marriage of Debra and Webster Watnik.	S114050
Debra Kniesley, Respondent, v. Wwbster Watnik, Appellant.	FILED April 9, 2003

Court of Appeal, Fourth Appellate District, Division Two—No. E031489

Petition for review DENIED.

s/GEORGE
Chief Justice